

在亞洲紮根您的慈善事業
是否設立慈善架構及在何處設立

超過

75%

亞太地區慈善基金會在21世紀建立

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緒言

世界各地的慈善家採用各種不同的架構形式開展慈善工作。1913年，美國的洛克菲勒家族設立了世界上最早的慈善基金會之一，並一直延續至今。相比之下，麥肯齊·斯科特(MacKenzie Scott)在過去兩年裡捐出逾100億美元，但除了她家族辦公室的顧問團隊之外並沒有設立任何正式架構。介於成熟的基金會和直接捐贈之間的新型法律模式日益受到歡迎，例如馬克·朱克伯格(Mark Zuckerberg)採用的有限責任公司、埃隆·馬斯克(Elon Musk)採用的捐贈者指示基金和他弟弟金布林·馬斯克(Kimble Musk)採用的分散自治組織。

雖然慈善捐贈在亞洲是一種歷史悠久的傳統，但現代意義上有架構的慈善對亞洲來說相對較新。近幾十年來，許多家族已建立基金會或慈善信託，為他們的家族創造文化遺產，並支持本地和全球的慈善倡議。隨著越來越多家族參與慈善事業，特別是隨著亞洲的私人財富水平不斷上升，基金會的數量近年來急劇上升。據哈佛大學的報告顯示，2018年，亞太地區的慈善基金會達13,170個，其中75%以上在21世紀建立。¹ 中國的慈善組織數目從2009年的不到2,000個飆升至2022年的超過11,000個。²

¹ 哈佛大學甘迺迪政府學院，2018年，「全球慈善報告：全球基金會行業展望」

² 中國民政部

為何需要設立慈善架構？

世界上大多數知名慈善家都選擇建立自己的捐贈架構，有些人甚至設立多個不同的架構實現不同的優先事項，為不同的家族成員服務或最大限度地提升稅收效益。然而，視乎不同國家和地區的法律，註冊和管理慈善架構可能會非常麻煩、耗時，並產生高昂成本。那麼設立慈善架構有何好處？

首先，設立自己的慈善架構可以幫助打造和加強您的家族文化遺產。以家族命名的基金會可將其產生的影響與家族的價值觀聯繫起來。除此之外，即使家族不再發揮積極作用，家族的文化遺產依然可以繼續存在。瑞典的諾貝爾基金會就是很好的例子。該基金會最初是根據阿爾弗雷德·諾貝爾(Alfred Nobel)的遺願創立，目的是資助諾貝爾獎。如今基金會不再接受諾貝爾家族的資助，而是透過有效管理其捐贈基金來提供資金，基金會也由專業團隊管理，諾貝爾家族並沒有積極參與管理。儘管如此，基金會的影響仍然與該家族的名字和價值觀密不可分。

其次，慈善架構可以幫助推動您想要從事的慈善事業。如果您想運作自己的項目及聘請員工，成立基金會可能是最好的選擇。在一些國家和地區，慈善機構(如香港的基金會或新加坡的公共慈善機構)也可以成為透過私人和公開籌款進行合作的平台。

再者，選擇合適的慈善架構有助於慈善資本的長期管理。儘管越來越多的慈善家只希望在有生之年捐贈，但許多人仍然選擇留出一部分財富，設立一個永續性的基金會資金池。如果管理和投資得當，這些資產不僅可以長期保值，還可以增值，這意味著基金會有機會隨著時間推移增加每年捐贈量。將投資重點放在符合基金會價值觀的項目上的現象也日益普遍。

「設立自己的慈善架構可以幫助打造和加強您的家族文化遺產」

選擇合適的地點 — 關鍵決定因素

設立慈善架構的第一步之一是決定它的所在地。許多慈善家默認選擇他們的祖國，但有些人選擇其他地方或幾個不同的地方。以下是我們認為在為慈善架構選擇地點時需要考慮的一些關鍵因素。

1. 註冊

在亞洲，註冊基金會或慈善信託基金通常比成立公司要複雜得多。近幾十年來，重商的觀念推動了本地區的快速增長，關於設立公司的法律變得更加友好。但在一些國家和地區註冊基金會可能需要數年時間，還可能需要獲得不同政府機構的批准。

需要考慮的重要問題：註冊的要求是什麼？註冊需要多長時間？註冊成本是多少？對註冊資本是否有要求？

2. 治理

慈善架構的治理架構決定了運作所需的資源和工作。為了提高公眾對慈善事業的信任，一些亞洲國家和地區對慈善架構的治理進行了嚴格的規範。需要考慮的一個關鍵方面是，慈善家及其家族能否以及如何確保他們能夠在有專家和其他利益相關者參與的情況下繼續引導架構的發展方向。

需要考慮的重要問題：您和您的家族對參與治理的要求是什麼？在您所選擇的司法管轄區內，是否有任何與您的計劃相衝突的董事會組成要求？是否有對全職雇員人數的要求？向監管部門報告的要求是什麼？

3. 活動

大多數慈善家自然傾向於在其慈善架構所能開展的活動較少受到限制的國家和地區設立架構。另一個考慮因素是，由於慈善架構通常享受監管機構的稅收優惠待遇，許多國家/地區都希望設置一些約束，使基金會的慈善目的明確，並確保大部分利益惠及當地社區。這在亞洲尤其重要，因為大多數亞洲國家都要優先改善本國公民的生活，並希望慈善家關注自己國家的需求。

需要考慮的重要問題：什麼會被認為慈善目的？可獲得資助的對象是哪些？慈善支出能否採用有回報的投資形式？活動是否有地理限制？跨境捐贈的流程是怎樣的？

4. 財務

對於任何慈善架構而言，管理資金的流入、流出和投資都極為關鍵。在理想的情況下，該架構應該能夠收到可減稅的捐款，控制其支付的節奏，並尋求在受到盡可能少的投資策略限制的情況下增加其慈善資本的價值。規管這些事項的規則在亞洲各地差別很大。

需要考慮的重要問題：稅收減免政策是什麼？是否有任何對集資的限制？最低年度捐贈支付額是多少？是否有任何投資限制？是否有任何營利活動限制？

亞洲慈善事業的溫床

作為亞洲的兩大金融中心，香港和新加坡多年來一直是極具吸引力的慈善架構目的地。兩地各有優缺點。近年來，隨著兩地嘗試吸引更多投資者，尤其是家族辦公室，慈善事業的監管環境備受關注，而且有一直延續的勢頭。

香港

香港以其有利市場的政策環境和資本的自由流動而著稱，擁有悠久的慈善歷史，多年來一直是慈善架構的理想目的地。香港擁有大量本地和海外組織以及多個全球知名的慈善家族，政府鼓勵慈善行業帶頭解決各種社會問題，並為其提供支援。近年來，憑藉作為通往中國內地門戶的獨特地位，香港在中國慈善家中尤其受歡迎。

在香港稅務局認可的各類免稅慈善架構中，主要有兩類，即擔保有限公司或慈善信託。這些機構需要按照《稅務條例》第88條的規定辦理申請手續。這些機構亦可籌款及為捐贈者提供稅收減免收據。

香港為慈善機構提供了亞洲最靈活的环境之一。關於治理結構的監管要求有限，對機構可進行的活動幾乎沒有限制，在捐贈基金的集資和資產管理方面有很大的迴旋餘地。這使得慈善機構能夠以相對較輕的行政負擔支持世界各地的各類活動。

然而為其成功所累，註冊流程近來大幅放緩，目前已存在積壓情況。在香港註冊慈善架構可能需時接近一年。政府曾嘗試引入慈善條例和設立專門的政府機構來管理慈善事務，但該嘗試最終以失敗告終，整個生態系統如今仍然依賴於具有不確定性的法律判例和政策。

「香港為慈善機構提供了亞洲
最靈活的环境之一」

新加坡

新加坡以其高效的行政管理著稱，新加坡政府一直致力於在其國內形成支持慈善事業的監管和政策環境，其中包括在文化、社區及青年部委任慈善專員（「CoC」），負責加強慈善部門工作。

在新加坡，慈善機構可以採用信託、基金或擔保有限公司的形式。要獲得免徵企業所得稅待遇，必須透過經濟發展局國際組織計劃辦公室，在CoC或非營利稅收激勵（NPOTI）組織註冊為慈善機構。後者專為具有全球和地區使命的組織而設。若要向捐贈人開具250%的稅收減免收據，慈善機構可以申請公共慈善機構（IPC）計劃或資助人稅收減免計劃。然而，這些計劃設有限制條款，即資金必須流向本地項目。

「新加坡政府一直致力於在其國內形成支持慈善事業的監管和政策環境」

憑藉250%的IPC稅收減免，新加坡提供了全球最慷慨的稅收政策來鼓勵慈善。然而，新加坡仍然區分用於本地和海外活動的慈善資本，政策主要偏向支持本地活動。例如，該國的80/20規則要求，參與向新加坡公眾籌集資金的慈善機構至少要將80%的資金分配給新加坡的項目。對慈善機構的治理也有具體的要求，例如對董事會成員中本地人的人數要求，監管和披露要求也相對嚴格。

NPOTI計劃於2007年首次引入並將於2022年3月31日到期，但新加坡政府意識到這是吸引更多外國非營利組織在該國設立機構的機會，因此將該計劃延長至2027年12月31日。政府也在尋找新的方式來鞏固新加坡作為區域慈善中心的地位。

亞洲新趨勢：捐贈者指示基金

正如早前所提及，如今美國和歐洲的許多慈善家選擇設立捐贈者指示基金，這是介乎直接捐贈與設立專門基金會之間的折中方案。這些機構採用以下模式：在公共慈善機構設立捐贈帳戶，使捐贈者能夠進行慈善捐款，立即獲得稅收減免，並提供有關基金捐款流向的意見³。

該選擇的優點頗多，包括匿名捐贈、稅收優惠、流程簡單和成本效益。捐贈者指示基金還能夠為那些資產規模不足以承擔獨立基金會管理成本的捐贈者建立持續參與的平台，並創造財富。另一個優點是沒有年度最低捐贈支出要求。然而在一些國家和地區，捐贈者指示基金因其相對隱秘的性質、有限的監管以及在捐款方面相對較少的支付壓力而引起爭議。

在亞洲，捐贈者指示基金仍是相對較新的概念。新加坡是這方面的先驅，新加坡社區基金會就是一個很好的例子，它為捐贈者指示基金帳戶提供了母平台。隨著越來越多的國家/地區尋求鼓勵捐贈的新方式，預計捐贈者指示基金將發揮更加重要的作用。

「隨著越來越多的國家/地區
尋求鼓勵捐贈的新方式，預計捐贈者指
示基金將發揮更加重要的作用」

³ 美國慈善信託基金 (National Philanthropic Trust)

結論

若要設立合法註冊的實體支援您的慈善事業，您需要仔細考慮，不僅要選擇合適的方式，還要選擇合適的地點。在許多亞洲慈善家眼中，香港和新加坡是極具吸引力的選擇，但其他亞洲國家/地區正在迎頭趕上，並更新相關政策，以吸引本地區日益增加的慈善財富。我們相信，這些發展將有助於亞洲慈善家擴大影響力，實現他們的目標。

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